

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SOON O. KIM, an individual,

Plaintiff,

v.

HUMBOLDT COUNTY HOSPITAL
DISTRICT, dba HUMBOLDT GENERAL
HOSPITAL; MOE HANZLIK, MARY ORR,
MEL HUMMEL, JIM FRENCH, and JIM
PARRISH, individuals,

Defendants.

Case No. 3:12-cv-00430-MMD-WGC

ORDER

(Defs.' Motion for Summary Judgment –
dkt. no. 36)

I. SUMMARY

Before the Court is a Motion for Summary Judgment (“Motion”) filed by Defendants Humboldt County Hospital District, dba Humboldt General Hospital (“HGH”); and Moe Hanzlik, Mary Orr, Mel Hummel, Jim French, and Jim Parrish (collectively, “Individual Defendants”) (dkt. no. 36). The Court has reviewed Plaintiff Soon O. Kim’s opposition (dkt. no. 42) and Defendants’ reply (dkt. no. 45). For the reasons discussed below, the Motion is denied in part.

II. BACKGROUND

Plaintiff asserts that HGH, her former employer, violated her First Amendment rights in terminating her employment in April 2012. The following facts are undisputed. (See dkt. no. 36 at 3; dkt. no. 42 at 1.)

1 Plaintiff began working for HGH as a general surgeon in November 2003. (Dkt.
2 no. 36 at 3.) In September 2010, Plaintiff entered into an Agreement for Physician
3 Employment (“Agreement” or “Employment Agreement”) to renew her employment with
4 HGH for a three-year term. (Dkt. no. 36-2, Exh. 1.) Under the Agreement, Plaintiff would
5 provide general surgery services to HGH between January 1, 2011, and December 31,
6 2013. (*Id.*, Exh. 1, at 2.) Either Plaintiff or HGH could terminate the Agreement without
7 cause with written notice of 180 days. (*Id.*, Exh. 1, at 12.) The Agreement states that
8 HGH’s Administrator, Defendant Parrish, would supervise “all non-clinical aspects” of
9 Plaintiff’s employment. (*Id.* Exh. 1, at 7-8; see *id.*, Exh. 2, at 22.)

10 When Plaintiff signed the Agreement, she was also a member of HGH’s Board of
11 Trustees (“Board”). (See *id.*, Exh. 2, at 33-34.) Plaintiff had been elected to the Board in
12 November 2008, and began her four-year term in January 2009. (*Id.*, Exh. 2, at 34.) She
13 filed for reelection on March 16, 2012; elections were to occur in November 2012. (*Id.*,
14 Exh. 2, at 27-28.) Plaintiff, however, left the hospital in August 2012, a few months after
15 the Board voted to terminate her Agreement. (*Id.*, Exh. 2, at 18). Plaintiff also served as
16 HGH’s chief of staff from October 2011 until she left the hospital. (*Id.*, Exh. 2, at 18.)

17 In January 2012, the Board amended its corporate compliance policy to address
18 potential conflicts of interest created when HGH employees serve on its Board. (Dkt. no.
19 3 ¶¶ 3, 7; see dkt. no. 36-4, Exh. 7, at 11.) The amended policy included a Political
20 Participation provision that states: “a Hospital employee shall not engage in any
21 employment, activity or enterprise, including service on the Hospital Board, which is
22 inconsistent, incompatible or in conflict with their duties as an employee.” (Dkt. no. 36-4,
23 Exh. 7, at 11.) The policy further provides that if an employee’s Board membership
24 creates a conflict of interest, the employee may resign from his or her position “prior to
25 taking and executing the oath of office and beginning the term of office,” or take paid or
26 unpaid leave. (*Id.*, Exh. 7, at 11.) Plaintiff abstained from voting on this provision during
27 the Board’s January 2012 meeting. (Dkt. no. 36 at 6; see dkt. no. 36-2, Exh. 2, at 20.)

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1 Two months later, in March 2012, Plaintiff filed her candidacy for reelection to the Board.
2 (Dkt. no. 36-2, Exh. 2, at 27-28.)

3 In April 2012, the Board unanimously voted to terminate Plaintiff's Employment
4 Agreement.¹ (Dkt. no. 36-4, Exh. 8, at 22.) Defendants Hanzlik, Orr, Hummel, and
5 French participated in the vote; Plaintiff abstained. (*Id.*, Exh. 8, at 22.) The vote occurred
6 after a presentation by Parrish, HGH's Administrator, and a Board discussion on the
7 drawbacks of having a single surgeon at HGH, the need for additional surgeons at the
8 hospital, and the potential benefits of hiring a surgical service for HGH. (*Id.*, Exh. 8, at
9 22.) Parrish had been researching surgical services for approximately one year before
10 the presentation. (Dkt. no. 36-2, Exh. 2, at 26.) A vote on the surgical service occurred in
11 May 2012. (*Id.*, Exh. 2, at 26.)

12 Beginning in 2004, before the Employment Agreement was terminated, Plaintiff
13 and other physicians at HGH brought complaints to HGH's Administrator and Board. (*Id.*,
14 Exh. 2, at 35, 37.) Plaintiff testified that the complaints were designed to help improve
15 the hospital's internal operations. (*Id.*, Exh. 2, at 36-37.) A Medical Staff Issues
16 spreadsheet was generated² in 2007 to record and monitor the status of these
17 complaints. (*Id.*, Exh. 2, at 35.) In the three months before her Employment Agreement
18 was terminated, Plaintiff's complaints identified nursing training and personnel needs,
19 patient education needs, slowness in lab results, and issues with the operating room.
20 (Dkt. no. 36-3, Exh. 3, at 13-14.) The spreadsheet was occasionally presented to the
21 Board, although it is not clear whether or when the Board reviewed the document. (Dkt.
22 no. 36-2, Exh. 2 at 37.)

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24 ¹Specifically, French moved to terminate the Agreement, which Orr seconded.
25 (Dkt. no. 36-4, Exh. 8, at 22.) Hanzlik, Orr, French, and Hummel — every Board member
26 present at the April 2012 meeting, except for Plaintiff — voted for termination. (*Id.*, Exh.
8, at 20, 22.)

27 ²Defendants contend that HGH's physicians maintained the spreadsheet. (Dkt.
no. 36 at 4 (citing Plaintiff's Deposition, dkt. no. 36-2, Exh. 2, at 35).) In her deposition,
28 however, Plaintiff testified that the Administrator generated the spreadsheet. (Dkt. no.
36-2, Exh. 2, at 35.)

1 Plaintiff initiated this action against HGH, its Administrator, and several of its
 2 Board members in August 2012, alleging that the termination of her Employment
 3 Agreement violated her First Amendment rights.³ (Dkt. no. 1.) Plaintiff sues the
 4 Administrator and the Board members in their individual capacities. (Dkt. no. 3 ¶ 3.)
 5 Defendants move for summary judgment, arguing that Plaintiff's claims must fail as a
 6 matter of law because Plaintiff cannot show that Defendants deprived her of her rights
 7 under the First Amendment, because Plaintiff cannot establish municipal liability for HGH
 8 or individual liability for Individual Defendants, and because Individual Defendants are
 9 entitled to qualified immunity. (Dkt. no. 36 at 2-3.)

10 **III. LEGAL STANDARD**

11 The purpose of summary judgment is to avoid unnecessary trials when there is no
 12 dispute as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
 13 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when "the movant
 14 shows that there is no genuine dispute as to any material fact and the movant is entitled
 15 to judgment as a matter of law." Fed. R. Civ. P. 56(a); see *Celotex Corp. v. Catrett*, 477
 16 U.S. 317, 322-23 (1986). An issue is "genuine" if there is a sufficient evidentiary basis on
 17 which a reasonable fact-finder could find for the nonmoving party and a dispute is
 18 "material" if it could affect the outcome of the suit under the governing law. *Anderson v.*
 19 *Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). Where reasonable minds could differ
 20 on the material facts at issue, however, summary judgment is not appropriate. *Nw.*
 21 *Motorcycle Ass'n*, 18 F.3d at 1472. "The amount of evidence necessary to raise a
 22 genuine issue of material fact is enough 'to require a jury or judge to resolve the parties'
 23 differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th
 24 Cir. 1983) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89
 25 (1968)). In evaluating a summary judgment motion, a court views all facts and draws all
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27 ³In September 2012, Plaintiff filed a First Amended Complaint ("FAC"), adding an
 28 equal protection claim that the parties have since agreed to dismiss. (Dkt. no. 3; see dkt.
 nos. 34, 35.)

1 inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v.*
 2 *Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

3 The moving party bears the burden of showing that there are no genuine issues
 4 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In
 5 order to carry its burden of production, the moving party must either produce evidence
 6 negating an essential element of the nonmoving party’s claim or defense or show that
 7 the nonmoving party does not have enough evidence of an essential element to carry its
 8 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
 9 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s requirements,
 10 the burden shifts to the party resisting the motion to “set forth specific facts showing that
 11 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may
 12 not rely on denials in the pleadings but must produce specific evidence, through
 13 affidavits or admissible discovery material, to show that the dispute exists,” *Bhan v. NME*
 14 *Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show
 15 that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am., NT &*
 16 *SA*, 285 F.3d 764, 783 (9th Cir. 2002) (citation and internal quotation marks omitted).
 17 “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be
 18 insufficient.” *Anderson*, 477 U.S. at 252.

19 **IV. DISCUSSION**

20 Plaintiff alleges that the termination of her Employment Agreement violated her
 21 First Amendment rights because it was motivated by two forms of retaliation: first,
 22 Defendants retaliated against Plaintiff’s decision to seek reelection to the Board; and
 23 second, Defendants retaliated against complaints Plaintiff had made about HGH’s
 24 operations. (Dkt. no. 3 ¶¶ 9-11.) With regard to Plaintiff’s first claim, the parties dispute
 25 whether Defendants’ Political Participation provision is unconstitutional both facially and
 26 as applied to Plaintiff’s decision to seek reelection, and whether Plaintiff’s Employment
 27 Agreement was terminated in retaliation for that decision. (See dkt. no. 3 ¶¶ 7-9, 11-12;
 28 dkt. no. 36 at 9-13; dkt. no. 42 at 3-4, 6; dkt. no. 45 at 9-13.) The Court finds that

1 supplemental briefing and a hearing on these issues are necessary. The Court therefore
2 reserves judgment on Plaintiff's claim that Defendants violated her First Amendment
3 rights by restricting her ability to seek reelection.

4 This Order focuses on Plaintiff's second claim — whether Plaintiff's complaints
5 about HGH motivated Defendants to terminate her Employment Agreement in violation
6 of her First Amendment rights. Defendants contend that Plaintiff's second claim must fail
7 because she cannot demonstrate a deprivation of her First Amendment rights pursuant
8 to a five-factor test that applies to First Amendment retaliation claims.⁴ (Dkt. no. 36 at
9 13); see *Eng v. Cooley*, 552 F.3d 1062, 1070-72 (9th Cir. 2009) (describing the five
10 factors). Rather, Defendants assert, the Employment Contract was terminated due to a
11 business decision, not because of Plaintiff's speech on matters of public concern.⁵ (Dkt.
12 no. 36 at 13-19.) The Court finds that a genuine issue of material fact exists as to
13 whether the termination of Plaintiff's Employment Agreement violated her First
14 Amendment right to speak on matters of public concern.

15 Plaintiff brings her claims under 42 U.S.C. § 1983, which provides for the private
16 enforcement of substantive rights conferred by the Constitution and federal statutes.
17 *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). Section 1983 establishes liability for
18 any person who, acting under the color of law, deprives a citizen of a right, privilege or
19 immunity protected by the Constitution or federal law. 42 U.S.C. § 1983. Plaintiff asserts
20 that HGH and Individual Defendants deprived her of substantive rights conferred by the
21 First Amendment. As a municipal entity, however, HGH "may not be held liable under 42
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23 ⁴Neither party asserts that Plaintiff's first claim regarding her reelection should be
24 reviewed under this 5-factor test for speech involving matters of public concern. (See
25 dkt. no. 36 at 13-19; dkt. no. 42 at 3-8; dkt. no. 45 at 13-17.) Plaintiff, however, groups
26 the factors into two general arguments: (1) protected activity, and (2) retaliatory motive.
(See dkt. no. 42 at 3-8.) Within those groups, Plaintiff addresses the five factors in the
context of her second claim, not her first. (See *id.* at 4-5, 7-8.)

27 ⁵Defendants also assert that Plaintiff failed to offer any properly authenticated and
28 otherwise admissible evidence to support her opposition to the Motion. (Dkt. no. 45 at 4-
8.) The Court need not address this argument because Defendants' own evidence
suggests that a genuine dispute of material fact exists.

U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving force behind a violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978)). The Court will address liability for Individual Defendants and for HGH separately.

A. Individual Defendants

Defendants contend that Plaintiff’s § 1983 claim against Individual Defendants must fail for three reasons: first, Plaintiff cannot demonstrate that the Employment Agreement’s termination deprived her of her First Amendment right to speak on a matter of public concern; second, Individual Defendants did not engage in any activity that caused the alleged violation of Plaintiff’s First Amendment rights; and third, Individual Defendants are entitled to qualified immunity. (Dkt. no. 36 at 13-19, 20-23; dkt. no. 45 at 13-18.) The Court considers each argument in turn.

1. Deprivation of Plaintiff’s First Amendment Right to Speak on a Matter of Public Concern

A First Amendment retaliation claim against a government employer involves a series of five questions:

(1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff’s protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Desrochers v. City of San Bernardino, 572 F.3d 703, 708-09 (9th Cir. 2009) (quoting *Eng*, 552 F.3d at 1070). All five factors are necessary — “failure to meet any one of them is fatal to the plaintiff’s case.” *Dahlia v. Rodriguez*, 735 F.3d 1060, 1067 n.4 (9th Cir. 2013) (en banc), *cert. denied sub nom. City of Burbank v. Dahlia*, 134 S. Ct. 1283 (2014). A plaintiff must satisfy the first three steps of the five-step test. *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1056 (9th Cir. 2013) (citing *Robinson v. York*, 566 F.3d

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1 817, 822 (9th Cir. 2009)). If the plaintiff succeeds, then the burden shifts to the
2 government to establish the fourth and fifth steps. *Id.* (citing *Robinson*, 566 F.3d at 822).

3 **a. Matter of Public Concern**

4 In analyzing the first step of the inquiry, public concern, “the essential question is
5 whether the speech addressed matters of ‘public’ as opposed to ‘personal’ interest.”
6 *Desrochers*, 572 F.3d at 709 (citing *Connick v. Myers*, 461 U.S. 138, 147 (1983)). The
7 plaintiff “bears the burden of showing that the speech addressed an issue of public
8 concern.” *Eng*, 552 F.3d at 1070 (citing *Connick*, 461 U.S. 138; *Bauer v. Sampson*, 261
9 F.3d 775, 784 (9th Cir. 2001)). “Whether an employee’s speech addresses a matter of
10 public concern must be determined by the content, form, and context of a given
11 statement, as revealed by the whole record.” *Eng*, 552 F.3d at 1070 (quoting *Johnson v.*
12 *Multnomah Cnty.*, 48 F.3d 420, 422 (9th Cir. 1995)) (internal quotation marks omitted).

13 The content of the speech is “the greatest single factor in the *Connick* inquiry.”
14 *Desrochers*, 572 F.3d at 710 (citations and internal quotation marks omitted). To address
15 a matter of public concern, the content of the speech must involve “issues about which
16 information is needed or appropriate to enable the members of society to make informed
17 decisions about the operation of their government.” *Id.* (citations and internal quotation
18 marks omitted). “On the other hand, speech that deals with individual personnel disputes
19 and grievances and that would be of no relevance to the public’s evaluation of the
20 performance of governmental agencies is generally not of public concern.” *Coszalter v.*
21 *City of Salem*, 320 F.3d 968, 973 (9th Cir. 2003) (citation and internal quotation marks
22 omitted); *see also Connick*, 461 U.S. at 154 (speech limited to “an employee grievance
23 concerning internal office policy” is unprotected). Speech that is not of public concern
24 also includes “speech that relates to internal power struggles within the workplace, and
25 speech that is of no interest beyond the employee’s bureaucratic niche.” *Desrochers*,
26 572 F.3d at 710 (quoting *Tucker v. Cal. Dep’t of Educ.*, 97 F.3d 1204, 1210 (9th Cir.
27 1996)) (footnote and internal quotation marks omitted).

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1 Plaintiff argues that her complaints about the quality of HGH's internal operations
2 — which appear primarily in the Medical Staff Issues spreadsheet — involve matters of
3 public concern. (Dkt. no. 42 at 4-5; see dkt. no. 3 ¶ 10.) The Medical Staff Issues
4 spreadsheet includes physician complaints submitted between November 2007 and July
5 2012, many of which came from Plaintiff. (Dkt. no. 36-3, Exh. 3.) For example, in the
6 three months before her Employment Agreement was terminated, Plaintiff pointed out
7 problems with “[p]atient WiFi access”; operating room policies; “[d]efib training for
8 nurses”; “[t]ouch[] screen education for patients”; and the timeliness of certain hospital
9 functions, including FFP delivery and daily lab results. (*Id.*, Exh. 3, at 13-14.) Plaintiff
10 also co-authored complaints with other HGH physicians, including that “[a]ntibody
11 identification [was] slow,” and that there was “OR tech frustration on resection.” (*Id.*, Exh.
12 3, at 13-14.)

13 Defendants contend that these complaints fail to qualify as matters of public
14 concern because they are “simple reference[s] to government functioning.” (Dkt. no. 45
15 at 14 (quoting *Brownfield v. City of Yakima*, 612 F.3d 1140, 1148 (9th Cir. 2010)).) In
16 *Brownfield*, the Ninth Circuit rejected a police officer's First Amendment retaliation claim
17 because the content of his speech “was decidedly personal.” 612 F.3d at 1147, 1149.
18 The officer prepared a memo, notes, and other documents chronicling perceived
19 deficiencies about his partner and supervisor. *Id.* at 1142-44. He also met and
20 communicated with superior officers about his partner. *Id.* Although one could read these
21 complaints as speaking to the police department's functioning, the court emphasized
22 that such references “do[] not automatically qualify as speech on a matter of public
23 concern.” *Id.* at 1148 (alteration, citation, and internal quotation marks omitted). Rather,
24 the court concluded, the plaintiff's speech was “the stuff of internal power struggles
25 within the workplace,” and not of concern to the public. *Id.* (quoting *Desrochers*, 572 F.3d
26 at 710) (internal quotation marks omitted).

27 Here, in contrast, Plaintiff's complaints reflect broader concerns about HGH's
28 operations, including, for example, the timeliness of hospital services, the facilities and

1 educational opportunities offered to patients, and nurse training needs. (See dkt. no. 36-
2 3, Exh. 3, at 13-14.) Plaintiff's complaints illustrate "department-wide problems, not
3 private grievances." *Ellins*, 710 F.3d at 1058 (concluding that a police officer engaged in
4 speech of public concern by leading a union's no-confidence vote for a police chief). Far
5 from an internal personnel dispute, these complaints speak to HGH's provision of patient
6 care, an issue that "the public or community is likely to be truly interested in." *Brownfield*,
7 612 F.3d at 1148 (citation and internal quotation marks omitted). The content of
8 Plaintiff's complaints thus indicates that Plaintiff engaged in speech of public concern.

9 Defendants also assert that the context and form of Plaintiff's complaints should
10 weigh against finding that her speech involves matters of public concern. Defendants
11 emphasize that the Medical Staff Issues spreadsheet was presented only to the Board,
12 and not to any public outlet. (Dkt. no. 36 at 15; dkt. no. 45 at 14-15.) "In a close case,
13 when the subject matter of a statement is only marginally related to issues of public
14 concern, the fact that it was made . . . to co-workers rather than to the press may lead
15 the court to conclude that the statement does not substantially involve a matter of public
16 concern." *Desrochers*, 572 F.3d at 710 (quoting *Johnson*, 48 F.3d at 425) (internal
17 quotation marks omitted). This is not a close case. Plaintiff's complaints involve matters
18 of public concern, including patient care at HGH. This content is not outweighed by the
19 fact that the Medical Staff Issues spreadsheet was an internal document. See *Demers v.*
20 *Austin*, 746 F.3d 402, 416 (9th Cir. 2014) ("[L]imited circulation is not, in itself,
21 determinative."). Accordingly, viewing the evidence in the light most favorable to Plaintiff,
22 the Court finds that a genuine issue of material fact exists as to Plaintiff's engagement in
23 speech on a matter of public concern.

24 **b. Public Employee or Private Citizen**

25 The Court must next determine whether a fact-finder could conclude that Plaintiff
26 was acting as a private citizen — rather than as public employee — when she
27 complained about HGH's operations. See *Eng*, 552 F.3d at 1071. "[C]ourts must make a
28 'practical' inquiry when determining the scope of a government employee's professional

1 duties.” *Dahlia*, 735 F.3d at 1063. Although this factor is a mixed question of fact and
2 law, *Anthoine v. N. Cent. Counties Consortium*, 605 F.3d 740, 749 (9th Cir. 2010),
3 determining whether a plaintiff acts as a public employee or a private citizen involves a
4 fact-intensive inquiry. *Dahlia*, 735 F.3d at 1074. As the Supreme Court has noted:

5 Formal job descriptions often bear little resemblance to the duties an
6 employee actually is expected to perform, and the listing of a given task in
7 an employee’s written job description is neither necessary nor sufficient to
8 demonstrate that conducting the task is within the scope of the employee’s
9 professional duties for First Amendment purposes.

10 *Garcetti v. Ceballos*, 547 U.S. 410, 424-25 (2006), *quoted in Dahlia*, 735 F.3d at 1069.

11 Although “no single formulation of factors can encompass the full set of inquiries”
12 involved in this determination, the Ninth Circuit has established “a few guiding principles”
13 for this analysis. *Dahlia*, 735 F.3d at 1074. First, in a “highly hierarchical employment
14 setting . . . whether or not the employee confined his communications to his chain of
15 command is a relevant, if not necessarily dispositive, factor.” *Id.* Communications outside
16 a chain of command generally suggest that an employee is not acting according to her
17 official duties. *Id.* (citing *Frietag v. Ayers*, 468 F.3d 528, 545-46 (9th Cir. 2006)). Second,
18 courts may consider the subject matter of the communication. A “routine report,
19 [prepared] pursuant to a normal departmental procedure, about a particular incident or
20 occurrence” may indicate that an employee is acting within her duties. *Id.* at 1075 (citing
21 *Garcetti*, 547 U.S. at 421). Speech that raises “broad concerns about corruption or
22 systemic abuse,” however, may fall outside an employee’s job duties. *Id.* Finally, speech
23 “in direct contravention to [an employee’s] supervisor’s orders” may support a finding
24 that an employee’s speech is outside of her official duties. *Id.*

25 Defendants argue that Plaintiff was acting within her official duties when she
26 lodged the complaints about HGH’s operations and facilities that appear in the Medical
27 Staff Issues spreadsheet. (Dkt. no. 36 at 16; dkt. no. 45 at 15-16.) To support this
28 argument, Defendants point to Plaintiff’s deposition testimony, in which Plaintiff agreed
that she raised these complaints “for the purpose of improving [her] work environment as
and [sic] employee/physician of HGH.” (Dkt. no. 36-2, Exh. 2, at 40; see dkt. no. 36 at

16; dkt. no. 45 at 15-16.) Defendants further stress that Plaintiff admitted to making those complaints “in [her] capacity as a contract employee/physician of HGH.” (Dkt. no. 36-2, Exh. 2, at 40; see dkt. no. 36 at 16.) The Court is not persuaded by this testimony. First, neither admission indicates that Plaintiff was speaking to the legal distinction between a public employee and a private citizen in admitting that she made these complaints while she was employed by HGH. Indeed, “[s]tatements do not lose First Amendment protection simply because they concern the subject matter of the plaintiff’s employment.” *Anthoine*, 605 F.3d at 749 (alteration, citation, and internal quotation marks omitted). Moreover, Plaintiff’s testimony indicates that Plaintiff and other staff instituted the complaint process themselves — Plaintiff stated that she was “the reservoir of all the complaints,” and that the Medical Staff Issues spreadsheet was generated in response to her initiative in seeking to resolve those complaints. (Dkt. no. 36-2, Exh. 2, at 35.) This testimony suggests that Plaintiff’s complaints were offered outside the context of her official duties as HGH’s surgeon.

Defendants also highlight Plaintiff’s Employment Agreement, which lists the following provision as one of several Physician Duties:

Physician [Plaintiff] shall promptly advise Hospital [HGH] of any deficiency or dangerous condition known to Physician in any part of the facilities, equipment or supplies provided by Hospital or any Physician perceived deficiency, training need or performance problem of any personnel supplied by Hospital.

(Dkt. no. 36-2, Exh. 1, at 3; see dkt. no. 45 at 15.) Defendants contend that this provision would “certainly” require Plaintiff to report “such issues as ‘Patient WiFi access,’ ‘O.R. time out policy’ and ‘Daily labs not happening on a daily basis.’” (Dkt. no. 45 at 15.) Like a job description, however, this provision is “neither necessary nor sufficient” to define the scope of Plaintiff’s official duties. *Garcetti*, 547 U.S. at 424-25. Nor have Defendants offered evidence demonstrating what “chain of command” would actually apply to Plaintiff’s complaints, had they been part of her official duties. See *Dahlia*, 735 F.3d at 1074. Furthermore, the evidence does not make clear whether the Medical Staff Issues spreadsheet — or other complaints that, according to Plaintiff’s testimony, were raised

1 but never included in the spreadsheet⁶ — is a routine report that Plaintiff contributed to
 2 as part of her duties. See *id.* at 1075. Thus, reading the evidence in the light most
 3 favorable to Plaintiff, the Court finds that a genuine issue of material fact exists as to
 4 whether Plaintiff spoke as a private citizen or a public employee.

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 6 **c. Substantial or Motivating Factor Behind Plaintiff's Termination**

7 Determining whether Plaintiff's speech was a "substantial or motivating factor in
 8 the adverse employment action" is a factual inquiry. *Eng*, 552 F.3d at 1071 (citation and
 9 internal quotation marks omitted). "[A]n adverse employment action is an act that is
 10 reasonably likely to deter employees from engaging in constitutionally protected speech."
 11 *Coszalter*, 320 F.3d at 970. A plaintiff may establish that retaliation was a substantial or
 12 motivating factor behind an adverse employment action with evidence that:

13 (1) the speech and adverse action were proximate in time, such that a jury
 14 could infer that the action took place in retaliation for the speech; (2) the
 15 employer expressed opposition to the speech, either to the speaker or to
 others; or (3) the proffered explanations for the adverse action were false
 and pretextual.

16 *Ellins*, 710 F.3d at 1062 (citing *Coszalter*, 320 F.3d at 977). Evidence of only one of
 17 these factors "may be sufficient to allow a plaintiff to prevail in a public employee
 18 retaliatory speech claim." *Id.* at 1063 (citing *Marable v. Nitchman*, 511 F.3d 924, 930 (9th
 19 Cir. 2007)).

20 Defendants argue that Plaintiff has not offered — and cannot offer — any
 21 evidence of these factors. First, Defendants contend that the timing of Plaintiff's
 22 termination is too remote to suggest that retaliation was a substantial or motivating
 23 factor. (Dkt. no. 36 at 17.) Defendants point out that Plaintiff submitted complaints
 24 beginning in 2007, and received raises and promotions until her Employment Agreement
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 27 ⁶Plaintiff testified that several complaints were not listed in the Medical Staff
 28 Issues spreadsheet. (Dkt. no. 36-2, Exh. 2, at 35.) For example, Plaintiff testified that she
 complained that physicians were being pressured to overuse HGH's ambulance services
 to help generate funds for the hospital. (*Id.*, Exh. 2, at 35.)

1 was terminated in 2012. (*Id.*) Next, highlighting Plaintiff's deposition testimony,
2 Defendants argue that Plaintiff undermined her retaliation argument by admitting that the
3 Board rarely, if ever, reviewed the Medical Staff Issues spreadsheet. (*Id.* at 17-18 (citing
4 dkt. no. 36-2, Exh. 2, at 37).) Defendants further insist that Plaintiff contradicted her
5 retaliation claim by testifying that she was terminated because of her decision to seek
6 reelection. (*Id.* at 18 (citing dkt. no. 36-2, Exh. 2, at 25).) Finally, Defendants take issue
7 with the admissibility of evidence Plaintiff offered in response to their Motion, which,
8 according to Plaintiff, indicates that Defendants expressed opposition to Plaintiff's
9 complaints. (Dkt. no. 45 at 16-17 (arguing that the evidence is inadmissible hearsay).)
10 Even in light of these arguments, the Court finds that an issue of fact exists as to the
11 motivation behind Plaintiff's termination.

12 As an initial matter, there is no dispute that the termination of Plaintiff's
13 Employment Agreement constitutes an adverse employment action. (See dkt. no. 36 at
14 16-18; dkt. no. 42 at 6-8; dkt. no. 45 at 16-17); see *Little v. Windermere Relocation, Inc.*,
15 301 F.3d 958, 970 (9th Cir. 2001) (as amended) ("And, of course, termination of
16 employment is an adverse employment action"); see also *Ulrich v. City & Cnty. of*
17 *San Francisco*, 308 F.3d 968, 977 (9th Cir. 2002) (noting that a plaintiff need only
18 demonstrate that she "suffered a loss of any governmental benefit or privilege in
19 retaliation for protected speech activity, not that [s]he had a legal right to the benefit
20 denied [her]" (citation and internal quotation marks omitted)).

21 With regard to the substantial or motivating factor, Defendants' evidence suggests
22 that the decision to terminate the Employment Agreement was false and pretextual. In
23 *Coszalter*, the Ninth Circuit concluded that, in addition to close timing between the
24 plaintiff's protected speech and the defendants' adverse employment action, the plaintiff
25 had offered evidence of pretext by demonstrating that the defendants had inconsistently
26 applied the policy for which the plaintiff was allegedly terminated. *Coszalter*, 320 F.3d at
27 978. In *Anthoine*, the court likewise reasoned that the plaintiff had offered evidence of a
28 false and pretextual employment action by showing that his employer dismissed him for

1 poor performance despite many examples of similarly unsatisfactory performance in the
2 years before his termination. *Anthoine*, 605 F.3d at 751-52. The plaintiff's disciplinary
3 problems became grounds for his termination only after he engaged in protected
4 speech. *Id.*

5 Here, Plaintiff's Employment Agreement was purportedly terminated because the
6 Board decided to contract with a third party to provide more surgical services at HGH.
7 (See dkt. no. 36-4, Exh. 8, at 22.) Minutes from the April 24, 2012, Board meeting
8 indicate that Parrish presented his research on "alternatives for providing surgery
9 services to the Humboldt County area."⁷ (*Id.*, Exh. 8, at 22.) Parrish argued that HGH
10 was reaching only 30% of the area's market for surgeries. (*Id.*, Exh. 8, at 22.) Board
11 members noted a high demand for surgical services in the area, and one member
12 expressed concerns about employing only one surgeon — Plaintiff — at HGH, including
13 HGH's vulnerability if anything should happen to Plaintiff, and potential liability caused by
14 the Plaintiff's practice of working long shifts. (*Id.*, Exh. 8, at 22.) The Board then voted to
15 notify Plaintiff that her Employment Agreement would be terminated at the close of a
16 180-day notice period mandated by the Employment Agreement. (*Id.*, Exh. 8, at 22.) The
17 Board simultaneously voted to "pursue recruitment of additional surgical coverage for
18 consideration at the next board meeting." (*Id.*, Exh. 8, at 22.)

19 These simultaneous decisions suggest pretext. Although Plaintiff testified that
20 Parrish had started researching outside surgical services in 2011 (dkt. no. 36-2, Exh. 2,
21 at 26), the April 24, 2012, minutes indicate that the Board decided to dismiss Plaintiff
22 before securing — or even recruiting — an alternative provider of surgical services (dkt.
23 no. 36-4, Exh. 8, at 22). Aside from Parrish's research on outside surgical services, the
24 evidence suggests that Defendants took no action to redress their concerns about
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26 ⁷The minutes merely summarize the Board's discussion on this issue. (See dkt.
27 no. 36-4, Exh. 8.) The Court has not reviewed a transcript of these proceeds. It is not
28 clear that a written transcript exists. (See dkt. no. 36-2, Exh. 2, at 40 (Plaintiff's
deposition testimony that an audio recording of a Board meeting is more accurate than
the minutes).)

1 market share, vulnerability, or liability before terminating Plaintiff. Just like the employer
2 in *Anthoine*, Defendants ignored these concerns during Plaintiff's years-long tenure as
3 HGH's sole surgeon. See *Anthoine*, 605 F.3d at 751-52. Plaintiff has offered sufficient
4 facts to create a genuine issue of fact as to whether retaliation was a substantial or
5 motivating factor behind Plaintiff's termination. Accordingly, the Court finds that an issue
6 of fact exists as to this factor.

7
8 **d. HGH's Justification for Treating Plaintiff Differently and
for Terminating the Employment Agreement**

9 Because the Court finds that genuine issues of material fact exist as to the first
10 three factors, the Court now addresses whether Defendants have met their burden for
11 the final two factors: (1) that Defendants had an "adequate justification for treating
12 [Plaintiff] differently from any other member of the general public," *Eng*, 552 F.3d at 1071
13 (quoting *Garcetti*, 547 U.S. at 418) (internal quotation marks omitted); and (2) that the
14 Agreement would have been terminated even in the absence of Plaintiff's protected
15 speech, *id.* at 1072. For both factors, "when questions of motive predominate in the
16 inquiry about how big a role the protected behavior played in the decision, summary
17 judgment will usually not be appropriate." *Ellins*, 710 F.3d at 1064 (quoting *Mabey v.*
18 *Reagan*, 537 F.2d 1036, 1045 (9th Cir. 1976)) (internal quotation marks omitted).

19 To determine whether Defendants were adequately justified in treating Plaintiff
20 differently than a member of the public, the Court must balance Defendants' "interest as
21 an employer in a smoothly-running office" with Plaintiff's First Amendment rights.
22 *Anthoine*, 605 F.3d at 752 (quoting *Robinson v. York*, 566 F.3d 817, 824 (9th Cir. 2009))
23 (internal quotation marks omitted). Defendants "must demonstrate actual, material and
24 substantial disruption, or reasonable predictions of disruption in the workplace." *Id.*
25 (quoting *Robinson*, 566 F.3d at 824) (internal quotation marks omitted). Defendants do
26 not attempt to make such a showing; instead, they argue that Plaintiff does not appear to
27 have alleged that she was treated differently. (See dkt. no. 36 at 19.) Defendants have
28 not met their burden on this factor.

1 Nor have Defendants satisfied their burden as to the last factor, which requires
2 showing that “the employee’s protected speech was not a but-for cause of the adverse
3 employment action.” *Eng*, 552 F.3d at 1072. This inquiry “relates to, but is distinct from,”
4 the third factor, or whether Plaintiff’s protected speech was a substantial or motivating
5 factor behind her termination. *Id.* Rather, this factor “asks whether the adverse
6 employment action was based on protected *and* unprotected activities, and if the state
7 would have taken the adverse action if the proper reason alone had existed.” *Id.* (quoting
8 *Knickerbocker v. City of Stockton*, 81 F.3d 907, 911 (9th Cir. 1996)) (internal quotation
9 marks omitted). Defendants contend that Plaintiff’s Employment Agreement would have
10 been terminated absent her speech because “the hospital needed additional surgical
11 coverage and decided to contract with a surgical group to provide that coverage.” (Dkt.
12 no. 36 at 19.) Defendants also emphasize that Plaintiff testified that the Board rarely
13 reviewed the Medical Staff Issues spreadsheet, and that she believed her termination
14 was due to her decision to seek reelection. (*Id.* (citing dkt. no. 36-2, Ex. 2, at 25, 37).)
15 Taken together, and read in the light most favorable to Plaintiff, this evidence
16 demonstrates that it is not clear that Plaintiff would have been terminated absent her
17 protected speech. Indeed, multiple motives could have prompted Plaintiff’s termination
18 — Defendants could have terminated the Employment Agreement because of Plaintiff’s
19 complaints or her decision to run for reelection, in addition to Defendants’ purported
20 concerns about Plaintiff’s ability to serve a sufficiently large share of the area’s surgery
21 market. See *Ellins*, 710 F.3d at 1064 (noting that summary judgment is usually not
22 appropriate where “questions of motive predominate” in determining the extent to which
23 protected activity prompted an adverse employment action). Thus, Defendants have
24 failed to meet their burden to show that Plaintiff’s protected speech was not a but-for
25 cause of her termination.

26 Reading the evidence in the light most favorable to Plaintiff, the Court finds that
27 genuine issues of material fact exist for each factor required to determine whether
28 Defendants retaliated against Plaintiff’s speech involving a matter of public concern

1 when they terminated her Employment Agreement. Accordingly, Defendants have not
2 shown that they are entitled to summary judgment on this issue.

3 **2. Individual Defendants' Involvement in the Deprivation**

4 In addition to their merits-based claims, Defendants assert that the FAC fails to
5 identify any specific constitutional deprivation that Individual Defendants caused. (Dkt.
6 no. 36 at 20-21.) This argument is not persuasive. “[T]o establish individual liability under
7 42 U.S.C. § 1983, ‘a plaintiff must plead that each Government-official defendant,
8 through the official’s own individual actions, has violated the Constitution.’” *Hydrick v.*
9 *Hunter*, 669 F.3d 937, 942 (9th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 676
10 (2009)). In *Hydrick* — which Defendants cite in their Motion — the Ninth Circuit rejected
11 a complaint based on “conclusory allegations and generalities” of government officials’
12 conduct, noting that the plaintiffs had failed to identify a specific policy, custom, or event
13 that led to their alleged constitutional deprivations. *Id.* at 942. Here, conversely, the FAC
14 asserts that Individual Defendants were involved in the specific decision to terminate
15 Plaintiff’s Employment Agreement. (Dkt. no. 3 ¶¶ 3, 5, 12.) Defendants do not offer any
16 other authority to support their argument that Individual Defendants cannot be liable for
17 their involvement in the decision to terminate Plaintiff’s Employment Agreement. (See
18 dkt. no. 36 at 20-22.) The Court will not grant summary judgment on this basis.

19 **3. Qualified Immunity**

20 Finally, Individual Defendants contend that they are entitled to qualified immunity,
21 an affirmative defense that shields from liability government officials whose “conduct
22 does not violate clearly established statutory or constitutional rights of which a
23 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
24 This immunity is granted broadly and “provides ample protection to all but the plainly
25 incompetent or those who knowingly violate the law.” *Moran v. Washington*, 147 F.3d
26 839, 844 (9th Cir. 1998) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)) (internal
27 quotation marks omitted). When conducting the qualified immunity analysis, the court
28 asks “(1) whether the official violated a constitutional right and (2) whether the

1 constitutional right was clearly established.” *C.B. v. City of Sonora*, 769 F.3d 1005, 1022
2 (9th Cir. 2014) (citing *Pearson v. Callahan*, 555 U.S. 223, 232, 236 (2009)). The court
3 may analyze the elements of the test in whatever order is appropriate under the
4 circumstances of the case. *Pearson*, 555 U.S. at 236, 240-42. Moreover, courts are to
5 decide whether defendants are entitled to qualified immunity as a matter of law, unless
6 material facts regarding the defense are genuinely disputed. *Conner v. Heiman*, 672
7 F.3d 1126, 1131 (9th Cir. 2012).

8 Because the Court has determined that issues of fact exist regarding whether
9 Defendants retaliated against Plaintiff’s speech on a matter of public concern in violation
10 of the First Amendment, the remaining question is whether the right was clearly
11 established at the time of the violation. See *Saucier v. Katz*, 533 U.S. 194, 201 (2001);
12 *Pearson*, 555 U.S. at 236. This question is an objective inquiry, and it turns on whether
13 a reasonable official in the defendant’s position should have known at the time that his
14 conduct was constitutionally infirm. *Anderson v. Creighton*, 483 U.S. 635, 639-40,
15 (1987); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 915 (9th Cir. 2012). “A [g]overnment
16 official’s conduct violates clearly established law when, at the time of the challenged
17 conduct, the contours of a right are sufficiently clear that every reasonable official would
18 have understood that what he is doing violates that right.” *Ashcroft v. al-Kidd*, — U.S. —
19 —, 131 S. Ct. 2074, 2083 (2011) (alterations, citation, and internal quotation marks
20 omitted). “[T]he right allegedly violated must be defined at the appropriate level of
21 specificity before a court can determine if it was clearly established.” *Dunn v. Castro*, 621
22 F.3d 1196, 1201 (9th Cir. 2010) (citation and internal quotation marks omitted). Courts,
23 however, “do not require a case directly on point, but existing precedent must have
24 placed the statutory or constitutional question beyond debate.” *al-Kidd*, 131 S. Ct. at
25 2083. Only where a state official’s belief as to the constitutionality of his conduct is
26 “plainly incompetent” is qualified immunity unavailable. *Stanton v. Sims*, 571 U.S. —,
27 134 S. Ct. 3, 5 (2013) (per curiam).

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1 The right for a hospital employee to engage in speech that “highlights
2 inappropriate standards affecting patient care at a public hospital” is well established.
3 *Ulrich*, 308 F.3d at 978-79 (citations omitted); accord *Pena v. Meeker*, No. C 00-4009
4 CW, 2014 WL 4684800, at *5-6 (N.D. Cal. Sept. 18, 2014) (citing *Ulrich* in holding that
5 qualified immunity did not extend to a hospital’s medical director because the plaintiff
6 physician’s “right to document patient abuse and malpractice at a public hospital” was
7 clearly established). Here, Plaintiff has demonstrated that the complaints she submitted
8 to the Medical Staff Issues spreadsheet — and other complaints that were never
9 recorded in the spreadsheet — reflect hospital standards and practices that affect
10 patient care. (See dkt. no. 36-3, Exh. 3; dkt. no. 36-2, Exh. 2, at 35.) Thus, Individual
11 Defendants are not entitled to qualified immunity for Plaintiff’s claim that she was
12 terminated for speaking on a matter of public concern.

13 **B. Municipal Liability**

14 Because the Court concludes that Plaintiff’s claim that she was terminated for
15 speaking on matters of public concern involves genuine issues of material fact, the Court
16 must determine whether liability for this constitutional deprivation may extend to HGH, a
17 municipal entity. “Congress did not intend municipalities to be held liable unless action
18 pursuant to official municipal policy of some nature caused a constitutional tort.” *Monell*
19 *v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 691 (1978). Under *Monell*, HGH
20 may be liable if its policy, practice, or custom was a moving force behind the First
21 Amendment violations at issue here. *Dougherty*, 654 F.3d at 900. “In order to establish
22 liability for governmental entities under *Monell*, a plaintiff must prove ‘(1) that the plaintiff
23 possessed a constitutional right of which she was deprived; (2) that the municipality had
24 a policy; (3) that this policy amounts to deliberate indifference to the plaintiff’s
25 constitutional right; and, (4) that the policy is the moving force behind the constitutional

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violation.” *Id.* (quoting *Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill*, 130 F.3d 432, 438 (9th Cir.1997)) (alterations omitted).⁸

Municipal liability may, however, extend to isolated constitutional violations caused by a person with final policymaking authority. *Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999); see *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988) (“We [the Court] have assumed that an unconstitutional governmental policy could be inferred from a single decision taken by the highest officials responsible for setting policy in that area of the government’s business.”). In fact, in *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-81 (1986), “the Supreme Court held that a single decision by a municipal policymaker may be sufficient to trigger section 1983 liability under *Monell*, even though the decision is not intended to govern future situations.” *Gillette v. Delmore*, 979 F.2d 1342, 1347 (9th Cir. 1992) (citing *Pembaur*, 475 U.S. at 480-81). Under this rubric, “[m]unicipal liability under section 1983 attaches only where a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.” *Gillette*, 979 F.2d at 1347 (quoting *Pembaur*, 475 U.S. at 483-84) (internal quotation marks omitted).

To determine whether municipal liability extends to HGH, the Court must decide (1) whether Individual Defendants are officials with final policymaking authority with respect to employment decisions, and (2) whether those officials made a deliberate choice — or chose to ratify a subordinate’s decision — to terminate Plaintiff’s Employment Agreement. “[W]hether an official had final policymaking authority is a
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⁸In the FAC, Plaintiff asserts that HGH “has a custom of infringing upon [the] First Amendment rights of its employees.” (Dkt. no. 3 ¶ 3.) Plaintiff has not offered evidence of such a custom. Rather, the FAC suggests that Individual Defendants are final policymakers whose decisions would open HGH to liability. (*Id.*) Moreover, Plaintiff relies on the final policymaker theory in her opposition brief, writing that “the Board defendants voted to terminate, an act of the final policymaker for the County as to hospital personnel matter[s].” (Dkt. no. 42 at 9.) The Court accordingly focuses on whether the Board’s decision may give rise to municipal liability.

1 question of state law.” *Pembaur*, 475 U.S. at 483. Neither party, however, has addressed
2 whether Individual Defendants constitute officials responsible for establishing policies
3 with regard to surgeon employment and termination. Instead, Defendants insist that
4 Plaintiff cannot show that her First Amendment rights were violated by the Political
5 Participation provision or any other HGH custom. (See dkt. no. 36 at 20.) Defendants
6 also rely on their assertion that Plaintiff has failed to establish any deprivation of her
7 constitutional rights (see *id.*; dkt. no. 45 at 18-19), and claim that Plaintiff’s arguments
8 regarding the Board’s policymaking authority are conclusory (dkt. no. 45 at 18-19).
9 Defendants have not demonstrated that Plaintiff lacks evidence to show that Individual
10 Defendants are officials with final policymaking authority. Nor have they presented
11 evidence to this effect. Accordingly, Defendants have not met their burden in showing
12 the absence of a genuine issue of material fact as to the Board’s and Parrish’s
13 policymaking authority. See *Nissan Fire & Marine Ins. Co.*, 210 F.3d at 1102.

14 The Court finds that genuine issues of material fact exist as to Plaintiff’s claim that
15 she was terminated in retaliation for speaking on matters of public concern. The Court
16 further finds that both Individual Defendants and HGH may be liable for this
17 constitutional deprivation. The Court therefore denies Defendants’ Motion in part.

18 **V. CONCLUSION**

19 The Court notes that the parties made several arguments and cited to several
20 cases not discussed above. The Court has reviewed these arguments and cases and
21 determines that they do not warrant discussion as they do not affect the Motion’s
22 outcome.

23 It is ordered that Defendants’ Motion for Summary Judgment (dkt. no. 36) is
24 denied with regard to Plaintiff’s claim that she was terminated because she spoke on a
25 matter of public concern.

26 It is further ordered that both parties are to prepare supplemental briefing on
27 Plaintiff’s claim that Defendants violated her First Amendment rights by restricting her
28 ability to seek reelection to the Board, both through the Political Participation provision

1 and by terminating Plaintiff's Employment Agreement. The supplemental briefing should
2 address the following questions:

3 (1) Is the constitutionality of the Political Participation provision dispositive
4 of this claim?

5 (2) If so, is the Political Participation provision a constitutional restriction on
6 Plaintiff's First Amendment rights?

7 Supplemental briefs are due within fifteen (15) days. The Court will set a hearing on this
8 issue.

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10 DATED THIS 25th day of March 2015.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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